IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TAMMY KITZMILLER, et al.,	
Plaintiffs,) Case No. 04-CV-2688
	(Hon. Judge Jones)
V.)
) (Filed Electronically)
DOVER AREA SCHOOL DISTRICT and)
DOVER AREA SCHOOL DISTRICT)
BOARD OF DIRECTORS,)
Defendants.	
	_)

DEFENDANTS' MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM USING OR INTRODUCING AT TRIAL STATEMENTS MADE BY INDIVIDUAL BOARD MEMBERS

Defendants move this court for an order prohibiting plaintiffs from using or introducing at trial any evidence regarding statements made by individual board members.

1. The statements of the individual board members that plaintiffs seek to introduce at trial are irrelevant. The evidence also constitutes improper character evidence and improper evidence of religious beliefs or opinions. Even if relevant, the evidence is more prejudicial than probative. Consequently, the evidence is inadmissible. *E.g.*, Fed. R. Evid. 402, 403, 404(a), 610.

- 2. In support of this motion, defendants rely on their brief and exhibits, which have been filed with this motion, and the papers contained within the court file.
- 3. Counsel for defendants and plaintiffs were unable to reach a resolution of this motion as of the date of its filing. M.D. Pa. Local R. 7.1. A proposed order has been submitted with this motion. *Id*.

Defendants respectfully request that this court grant them the relief sought through this motion and supporting brief.

Respectfully submitted,

VIIOU

Richard Thompson (MI P21410)* Patrick T. Gillen (MI P47456)* Robert J. Muise (MI P62849)*

Edward L. White III (MI P62485)*

Thomas More Law Center 24 Frank Lloyd Wright Drive

P.O. Box 393

Ann Arbor, MI 48106

734-827-2001; Fax. 734-930-7160

ewhite@thomasmore.org

*Admitted pro hac vice

Ron Turo Turo Law Offices 29 South Pitt Street Carlisle, PA 177013 717-245-9688

Counsel for defendants

Dated: September 6, 2005

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2005, a copy of the foregoing defendants' motion in limine and proposed order was served on the following counsel through the court's electronic case filing system:

Eric Rothschild Stephen G. Harvey Pepper Hamilton LLP 3000 Two Logan Square 18th & Arch Streets Philadelphia, PA 19103

Witold J. Walczak ACLU of Pennsylvania 313 Atwood Street Pittsburgh, PA 15213

Richard B. Katskee
Ayesha Khan
Alex J. Luchenitser
Americans United for Separation
of Church and State
518 C Street, NE
Washington, DC 20002

Thomas B. Schmidt, III Pepper Hamilton LLP 200 One Keystone Plaza North Front and Market Streets P.O. Box 1181 Harrisburg, PA 17108

Ron Turo Turo Law Offices 29 South Pitt Street Carlisle, PA 17013

Mary Catherine Roper ACLU of Pennsylvania P.O. Box 1161 Philadelphia, PA 19105

Edward L. White III
Admitted pro hac vice